

ARGUMENTS IN TITHING CASE

They Were Concluded Before
Judge Morse and Taken
Under Advisement.

WHAT THE CONTENTIONS ARE.

Strong Presentation by Hon. F. S.
Richards and Reply by Judge
C. S. Zane.

The case of Don Carlos W. Musser and Charles A. Smurthwaite vs. Joseph P. Smith, president and trustee in trust of the Church of Jesus Christ of Latter-day Saints, and John R. Winder and Anthony H. Lund, his counsel, and William B. Preston, presiding bishop of the Church, was up yesterday before Judge C. W. Morse on the defendants' demurrer to the plaintiffs' second amended complaint, and was argued by Hon. F. S. Richards for the defendants and C. S. Zane for the plaintiffs. Arguments were resumed today and the case taken under advisement.

The action is brought to obtain a decree declaring the legal duty of Joseph P. Smith, president and trustee in trust of the Church, with respect to tithing and other donations, and to secure an injunction restraining the defendants from investing or continuing investments of the Church funds in any business or enterprise established or prosecuted for commercial, industrial or business purposes.

ORIGINAL COMPLAINT.
It will be remembered that a demurrer was filed by the defendants to the original complaint, on the ground that it did not state facts sufficient to constitute a cause of action, and because it was ambiguous in certain particulars. An amended complaint was then filed and a similar demurrer interposed. This demurrer was afterwards sustained by the court, which filed a written decision, holding that the amended complaint did not state facts sufficient to constitute a cause of action.

A second amended complaint was filed and demurred to on the same grounds. This is the demurrer that was argued yesterday.
Mr. Richards made a lengthy and exhaustive argument, during which he read the decision of the court on the former demurrer, and compared the present complaint with the previous one, to show what changes had been made in the pleading. His contention being that the allegations of the second amended complaint did not meet the requirements of the law or the decision of the court, and that it came nearer to stating a cause of action than the former complaint, which was held to be insufficient.

WHAT WAS NOT ALLEGED.

He emphasized the fact that it was not alleged or contended by counsel for the plaintiffs that the acts of the defendants complained of were unlawful in the sense that they are in violation of any of the laws of this state, neither was it alleged or contended that any of the trust property had been or was being appropriated by the defendants, or either of them, to their own use; or that either of the defendants had been guilty of any fraud with relation to such property. The contention was that the investment of the funds in the stocks of certain commercial and industrial enterprises was unauthorized and unwarranted, and constituted a violation on the part of the defendants of their duties as trustees, but that those duties are, and what the limitations of authority on the part of the trustees, do not appear in either of the complaints, although it is essential that they should appear, in order to show the terms of the trust, which must be known to the court before it can determine whether or not there has been a violation of the trust.

THE VITAL DEFECT.

The vital defect in this complaint, as well as in the former ones, is that neither of them states facts showing the terms of the trust under which the Church funds are held, nor how the funds are to be managed and applied, and with whom, if anyone, rests the discretion of determining or directing such management or expenditure. The court said in its decision:
"All the facts or circumstances relied upon to show the creation or existence of a trust in favor of the plaintiffs must be distinctly alleged. And this must be so, for it cannot be determined whether a breach of duty or the cause of action has been established, unless the duty or obligation be clearly set forth and defined."

THE TWO COMPLAINTS.

In the former complaint the allegation was made that the Church "exacts annually from its members a tenth of their gains or income as tithing; that said contributions are paid to said Church and said trustee for its appropriation and expenditure by it exclusively for Church purposes," which are then enumerated. In the present complaint it is alleged "that according to a doctrine and rule of said Church, its members, respectively, have been and are required to pay to it one-tenth of their gains and income as tithing; that said tithing is and has been paid to the presiding bishop of said Church, and by him it has been and is paid or turned over to the aforesaid trustee in trust of the Church of Jesus Christ of Latter-day Saints, and John R. Winder, who holds the same solely for Church purposes, and not for secular purposes," the Church purposes being enumerated in the present complaint exactly as they are stated in the former complaint.

THE TWO COMPLAINTS.

CAPT. McLEAN
Capt. W. H. McLean of the big ocean steamship City of Sydney of San Francisco and Panama makes this important statement:

In December, 1904, I was in the last stages of Bright's Disease. San Francisco physicians told me there was no show for me. The dropsy was so deep that I could stick a finger in the flesh almost an inch. J. W. Burnham, President Burnham & Marsh Co., told me he knew several cases of Bright's Disease that had recovered under Fulton's Renal Compound. My old friend Donlon of Donlon & Peck told me the same thing—said he knew of worse cases than mine that got well. This started me. The first half-dozen started the change, and I am at this writing (ten months later) as well as ever, and can pass for life insurance. I have told passengers from all over the world of my recovery. This treatment ought to be known all over the globe.

CAPT. W. H. McLEAN.

Pacific Mail Dock, San Francisco.
Bright's Disease and Diabetes are curable in 87 per cent of all cases by Fulton's Compound. Send for literature.

F. J. Hill Drug Co., Local Agents, Salt Lake City.

When to suspect Bright's Disease—weakness or loss of weight; puffy ankles, hands or eyelids; Dropsy, kidney trouble after the third month, urine may show sediment; falling vision; brownness; one of more of these.

exist then there is no cause of action constituted. Plaintiffs then by not naming the amounts invested in each case and therefore prayed the court that defendant be requested to set out the respective amounts. That was a usual thing in injunctions.

Judge Zane then dealt at length with the gifts and donations, real and personal, received by the Church from time to time, the amounts being unknown to the plaintiffs, who asked that the defendants be compelled to make known the amounts and that they be restrained from in any way diverting the funds from their proper source. He then took up the several sections of the demurrer and read a brief in reply. The gist of it is in this paragraph:

THROUGH SOME LAW.

"It is also alleged in the second amended complaint that the Church has no constitution or by-laws and no articles of association, and it has not adopted any rules or regulations designating the purposes to which the Church funds in the hands of the trustee in trust may or can be devoted, or how he shall use them. This allegation is evidently made because of the statement in the decision of the court, that the determination of what the powers and limitations of authority on the part of the trustees were could only be determined 'by reference to the laws, rules and regulations of the society and the terms of the trust.' But, the allegation that the Church has not adopted any rules or regulations on the subject does not meet the objection, because it is alleged that the tithing is paid according to a 'doctrine and rule of the Church.' And this must necessarily be so. The court in its decision on the former demurrer, said that the tithing must necessarily be paid through some law, rule or regulation promulgated by some persons or body having authority to act in such matters. The complaint, however, is silent as to the character or terms of any such rule or regulation with reference to the object of such payment, or how the funds of the Church are to be managed and applied, and with whom, if anyone, rests the discretion of determining or directing such management or expenditure."

CREATION OF TRUST.
It is not claimed that the trust was created by reason of any express directions and limitations made by the donors at the time of making the contributions, and therefore the terms of the trust can only be determined by the law or rule of the Church under which the contributions were made. And this law or rule, "doctrine" as it is called in the complaint, has not been set forth, and therefore does not appear to the court. This is a vital defect in the second amended complaint, and as the court said in its opinion, "it cannot be determined whether a breach of duty or the cause of action has been established, unless the duty or obligation be clearly set forth and defined."

NOT LEGAL ALLEGATIONS.

Counsel pointed out numerous conclusions of law in the second amended complaint, which were not legal allegations, because they did not state facts, and because they were in violation of the decision. He insisted that the facts stated in both complaints were substantially the same, and that neither of them stated a cause of action, because they did not state the terms of the trust, or such facts as would enable the court to determine whether or not there had been a violation of it.

HAVE NO INTEREST.

Mr. Richards also claimed that it did not appear in the second amended complaint that the plaintiffs had such an interest in the subject matter of the action as would entitle them to institute or maintain the suit. They do not even allege that they are taxpayers, and have contributed in any way to the fund which they seek to have the court control, nor do they show that they belong to any of the classes of persons that would have an interest in the distribution of the fund. The law says that the action must be prosecuted in the name of the real party in interest, and numerous cases were cited to show that the plaintiffs did not have such an interest as would entitle them to maintain the suit. Among other cases counsel referred to the matter of the intervention of George Romney, Henry Dinwoodey, James Watson and John Clark in the Church exchequer case, where they claimed that the property of the Church should go to its members upon a dissolution of the corporation. But the supreme court of Utah denied their application, and decided that they had no legal claim or title in and to the property.

AS TO INTERVENTION.

If the intervenors in that case, who were members of the Church and had contributed to the Church fund, had no such interest in it as would entitle them to intervene and prevent it from being executed to the government, certainly the plaintiffs in this case have no such interests in the Church fund and property, which have been accumulated in precisely the same way and a part of which is the identical fund involved in the other litigation, as would entitle them to maintain this action. The decision in the former case makes it clear that the plaintiffs have no standing in this court.

JUDGE ZANE MAKES REPLY.

Judge Zane in reply said the facts in the complaint are admitted by the demurrer. As to the use of the Church funds in secular business, of course they could not go into the details and state all transactions in the name of the president or the name of the Church or otherwise. The Church of Jesus Christ is a Church under the decisions of the court and when they said it is a Church, that an association is a church, then the courts held that a donation to that church is for religious purposes, that is the conclusion.

There was no rule of the Church with regard to the distribution of tithes. If there was a rule the defendants know what it was and could set it out. Nor was it alleged that it can only be used for religious purposes. That was the rule that applied to all religious associations whether incorporated or voluntary with articles and rules or without them. Judge Zane then enumerated several enterprises in which he alleged the Church had invested funds, and said: Now there it is set out how the investment is made. He supposed Mr. Richards wanted him to point to the written rule that was violated. Why is it a violation of the law? All legal principles are a definition. They say this is a fact and that a fact exists. The law is so and so and says give effect to it. Then it requires this fact, and that one to exist, and if one doesn't

and when this Church was incorporated by the act of Congress, then by the courts declared that it was distinct from the church of the Territory of Utah and the supreme court of the United States, it continued in the use of these tabernacles and houses of worship, continued in all its charitable objects and expended money as it had done before.

If we have got to state where the devices were made we will have to quit. There is no limit, because we cannot state it. Hundreds of thousands pay this tithing in different lands and in various climes, men of various tongues and nationalities, because this Church has its missionaries all around the globe and it has got its societies and sub-societies in almost every civilized land. Now, for us to ask what was the instructions from these persons when this money was donated—it is understood it is the Church of Jesus Christ of Latter-day Saints and all the men who believe it, it is the means through which they intend to get into heaven—now to ask that we should state the understanding of these persons would be a most unreasonable requirement.

This is not an association where pecuniary profit is desired—it is religion. The statute required them to state the

HAWAIIAN MUSICIANS RECOGNIZE PREST. SMITH.

Remember Appreciatively the Face of the Reverend Leader Who Had Carried the Gospel to Their Fathers—Origin of the Great Band Whose Members at One Time Could Play Only Native Chants.

There was a pretty exchange of compliments at Salt Lake Thursday evening.

The Royal Hawaiian band, with its gleeful club, was rendering one of its noted "Hulas." Suddenly Kawa Lehai, one of the most expert mandolinists among the natives, nudged his nearest neighbor. At the same moment a trio of singers turned to each other, nodded, and smiled a smile of satisfaction. They bowed toward the audience—few knew why—and at the finish of the song one of them stepped forward to the conductor, Herr Berger, and whispered something into his ear. The number which followed had not been announced on the program, and it was not sung. And only one person in the audience realized that it was the beautiful melody to which the Hawaiians sing "O my Father," the famous "Mormon" anthem. That one person was President Joseph F. Smith. As he entered he was recognized by members of the band who were long ago converted to the principles of the Latter-day Saints Church and he alone upon taking his seat, noticed the complimentary services rendered him in silence until the last of the plaintive notes had died away. Then he glanced significantly toward the musicians, and was greeted by a score or more of smiling faces; by the people who were familiar with his features, but from having seen his photographs, which are liberally exhibited in the "Mormon" chapels throughout the islands. Until the end of the concert President Smith was deeply interested in the Hawaiian music, and he had not been to the days when he mingled with the fathers of these natives as a missionary.

It is well known in the Church that shortly after President George Q. Cannon had established the mission in the Hawaiian Islands, President Joseph F. Smith was sent to relieve him. This occurred in 1854. But it is not known, perhaps, that nine members of the Royal Hawaiian band are sons of converts of the mission made by Presidents Cannon and Smith; that they have followed in the footsteps of their fathers and are considered devout saints today; that they regret their inability to attend the conference services tomorrow afternoon, especially so in view of the fact that this is their first trip to Utah—the first time, in fact, that any of them has traveled farther east than Portland, where the band played at the World's Fair at the Lewis and Clark exposition.

The Royal Hawaiian band derives the title "Royal" from the fact that it was

DR. HUGHES' LECTURE.

Will Speak on "Things That Hinder The Growth of a Child."

A lecture of exceptional interest to all teachers and those interested in the education of children will be given Sunday evening in the Assembly hall, under the auspices of the University of Utah summer school.

The lecture will be upon the subject: "Things That Hinder the Growth of a Child," and will be delivered by James L. Hughes, of Toronto, Canada. Mr. Hughes is inspector of schools of Toronto, and has acquired an international reputation as an author of numerous educational topics. Following the lecture in the Assembly hall Sunday evening he will deliver a series of five lectures at the University campus, which are part of the summer school series. When he was originally engaged to go to San Francisco this summer, and could not do so, however, his coast trip had to be abandoned, and the university considers itself fortunate in being able to secure him for his

A Baby's Taste

Guided to

Grape-Nuts

A minister says: "A few days ago an incident occurred in my home that may interest you."

"Our baby boy, a fine specimen of two years and three months old babyhood, was brought down stairs immediately after he awoke."

"He was teething, and had eaten but little food for two or three days, and had to be coaxed to do that. On this particular morning I had a box of Grape-Nuts, of which he is very fond."

"His mother had some cornmeal mush cooked, and served him with that instead, but after he had looked at it for a moment, he pushed it away indignantly, saying, 'I don't want that! I want Grape-Nuts.' He would not be satisfied until Grape-Nuts was served to him, which he ate with evident enjoyment. We were interested in his discrimination, and you will doubtless appreciate the boy's taste."

"I don't want that! I want Grape-Nuts." He would not be satisfied until Grape-Nuts was served to him, which he ate with evident enjoyment. We were interested in his discrimination, and you will doubtless appreciate the boy's taste."

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purpose of the association and confine themselves to those purposes. The Legislature had clearly indicated that it was contrary to public policy for any church association or charitable association to engage in any secular business. It necessarily follows if this Church has the right to do it then every other church has, and I say there is no church that I know of in the United States that engages in all kinds of business, and no corporation does so. They are limited to the purpose of their organization. It might be well to state that there are associations that are incorporated—there are voluntary associations that have constitutions and by-laws, and rules; there are associations that have no constitution, rules or by-laws—but they are all governed by this principle that they must keep to the purpose of their association. There is not much religion about many of these kinds of business. I don't think there is much religion in any of them.

At this stage an adjournment was taken for lunch, the arguments to be resumed at 3 o'clock. At that hour the court had not finished hearing a divorce suit, so, upon stipulation, the further arguments were continued until 3:30 this morning.

organized by King Lunalillo of Hawaii about 35 years ago—long before the time of Queen Liliuokalani—as an imperial escort for his majesty. The latter was very friendly with Emperor Wilhelm of Germany at that time and had heard that he owned such an organization. A band materialized. The emperor knew no music besides their chants. The technical qualities of the art had to be supplied. So the old king laid his predicament before the friendly emperor, and asked that he select someone to teach his subjects the ins and outs of instrumental music. The emperor knew no music besides their chants. The technical qualities of the art had to be supplied. So the old king laid his predicament before the friendly emperor, and asked that he select someone to teach his subjects the ins and outs of instrumental music. The emperor knew no music besides their chants. The technical qualities of the art had to be supplied. 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